

BEFORE THE DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

ARCHIBALD A. McKIRDY, M.D.  
Certificate No. A-21018,

Respondent.

NO. D-2539

DECISION

The attached Stipulation is hereby adopted by the Division  
of Medical Quality of the Board of Medical Quality Assurance as its  
Decision in the above-entitled matter.

This Decision shall become effective on October 20, 1981.

IT IS SO ORDERED September 29, 1981.

15, 1981

DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE



MILLER MEDEARIS  
Secretary-Treasurer

1 GEORGE DEUKMEJIAN, Attorney General  
of the State of California  
2 SUZI TANGUAY  
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5  
6 Attorneys for Complainant  
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8 BEFORE THE DIVISION OF MEDICAL QUALITY  
9 BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation  
Against:

12 ARCHIBALD A. McKIRDY, M.D.  
13 2645 Ocean Avenue  
San Francisco, California  
14 Physician and Surgeon's  
Certificate No. A-21018

NO. D-2593

STIPULATION FOR  
SETTLEMENT

15 Respondent.  
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18 IT IS HEREBY STIPULATED by and between the parties, in  
19 the above entitled matter, as follows:

20 1. An accusation number D-2593 is currently pending  
21 against Archibald A. McKirdy, M.D. (hereinafter referred to as the  
22 "respondent") before the Division of Medical Quality of the Board  
23 of Medical Quality Assurance of the State of California (herein-  
24 after referred to as the "division").

25 2. Respondent has counseled with his attorney, Robert  
26 A. Spinner of the firm of Severson, Werson, Berke and Melchior,  
27 One Embarcadero Center, Twenty-Fifth Floor, San Francisco,

1 California 94111 in this matter.

2 3. Respondent is fully aware of the charges and  
3 allegations contained in said accusation number D-2539 on file  
4 with the division and respondent has been fully advised with regard  
5 to his rights in this matter.

6 4. Respondent is fully aware of his right to a hearing  
7 on the charges and allegations contained in said accusation number  
8 D-2539, his rights to reconsideration, appeal, and any and all  
9 other rights which may be accorded to him pursuant to the  
10 California Administrative Procedure Act and the Code of Civil  
11 Procedure.

12 5. Respondent hereby freely and voluntarily waives his  
13 rights to a hearing, reconsideration, appeal and any and all other  
14 rights which may be accorded to him by the Administrative Procedure  
15 Act and the Code of Civil Procedure with regard to said accusation  
16 number D-2539 on file with the division.

17 6. The factual allegations contained in paragraphs 1, 2,  
18 5A, 5B, 7A through 7C, 10 and 12 of said accusation number D-2539  
19 are true.

20 7. Based on the foregoing stipulated facts, cause for  
21 disciplinary action has been established under the provisions of  
22 sections 2360 and 2361 of the Business and Professions Code in  
23 connection with respondent's violation of section 2399.5 of the  
24 Business and Professions Code and section 2391.5 of the Business  
25 and Professions Code in conjunction with sections 11154 and 11172  
26 of the Health and Safety Code.

27 8. The division shall issue the following order;

2.

The physician's and surgeon's certificate number A-21018 heretofore issued to respondent Archibald A. McKirdy, M.D., is hereby revoked. Upon satisfaction of condition A, revocation shall be stayed and respondent placed on probation for five (5) years upon certain terms and conditions. The period of probation shall not begin and respondent's certificate shall remain revoked until condition A has been fulfilled.

A. Respondent must surrender for cancellation his DEA permit together with any triplicate prescription forms and federal order forms to the Drug Enforcement Administration and must register for a DEA permit which allows the prescribing, dispensing, administering and ordering of only schedule III, IV and V drugs. Respondent must provide documentary proof of that surrender and reregistration no later than the effective date of the decision. Respondent shall not reapply for full use of said permit without prior written approval of the division.

During probation, the respondent must also do the following:

B. Respondent's physician and surgeon's certificate is suspended for thirty (30) days beginning the effective date of this decision.

10-15-81-11-13-81

1 C. Respondent must not prescribe, administer,  
2 dispense, order or possess (except as prescribed,  
3 administered or dispensed to respondent by another  
4 person authorized by law to do so) schedule II  
5 controlled substances as defined in division 10  
6 of the Health and Safety Code (California Controlled  
7 Substances Act, §§ 11000-11651, incl.).

8 D. Within 180 days of the beginning of the  
9 period of probation, respondent must submit to  
10 the division for its prior approval an education  
11 course of approved category I continuing medical  
12 education totaling 50 hours beyond the requirements  
13 for relicensure. Said course must be related to  
14 the violations found in the decision. Respondent  
15 must enroll and successfully complete this course  
16 within the first year of probation. Respondent  
17 must enroll in and successfully complete 25 hours  
18 of said additional educational courses during the  
19 second year of probation. The division or its  
20 designee may also require respondent to pass an  
21 examination related to the content of the program.

22 E. Within 30 days of the effective date of this  
23 decision, respondent must submit to the division  
24 for its prior approval a community service program  
25 in which respondent shall provide free medical  
26 services on a regular basis to a community or  
27 charitable facility or agency for at least 16

1 hours a month for the first two years of  
2 probation.

3 F. Respondent shall comply with all laws  
4 of the United States, the State of California  
5 and its political subdivisions relating to the  
6 practice of medicine and with the rules and  
7 regulations of the Board of Medical Quality  
8 Assurance.

9 G. Respondent shall cooperate with  
10 representatives of the division in the monitoring  
11 of these terms and conditions.

12 H. Respondent must appear in person for  
13 interviews with the medical consultant of the  
14 division upon request at various intervals and  
15 with reasonable notice.

16 I. Respondent shall provide quarterly  
17 reports under penalty of perjury on forms  
18 provided by the division stating whether  
19 respondent has complied with all conditions  
20 of probation.

21 J. Periods of residency or practice outside  
22 California will not apply to the reduction of  
23 this probationary period. Respondent must  
24 notify the division in writing of the dates of  
25 his departure and return in the event respondent  
26 should leave California to reside or to practice  
27 outside the state.

1 K. In the event respondent does not comply  
2 with the aforesaid terms and conditions of the  
3 stay granted for the full period thereof, the  
4 division may, after providing him with an  
5 opportunity to be heard, set aside the stay and  
6 reimpose the order of revocation or make such  
7 other order modifying or changing the stay  
8 order as it shall deem proper.

9 L. In the event respondent complies with  
10 - all such terms and conditions of the stay granted  
11 for the full period thereof, the order staying  
12 the revocation shall become permanent and  
13 respondent's license shall be fully restored.

14 9. All admissions of fact and conclusions of law  
15 contained in this stipulation are made exclusively for this  
16 proceeding and any future proceedings between the division and  
17 the respondent, and shall not be deemed to be admissions for any  
18 purpose in any other administrative, civil or criminal action,  
19 forum or proceeding.

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1 10. The within stipulation shall be subject to the  
2 approval of the Division of Medical Quality. If the division  
3 fails to approve this stipulation, it shall be of no force or  
4 effect for either party.

5  
6 DATED: 7/16/81. *Archibald A. McKirby M.D.*  
7 ARCHIBALD A. MCKIRBY, M.D.  
Respondent

8  
9 DATED: 7/22/81. *Robert A. Spanner*  
10 ROBERT A. SPANNER  
Attorney for Respondent

11  
12 GEORGE DEUKMEJIAN  
Attorney General  
13 SUZI TANGUAY  
Deputy Attorney General

14  
15 DATED: July 28, 1981. *Suzi Tanguay*  
16 SUZI TANGUAY  
Deputy Attorney General  
17 Attorneys for Complainant



1 GEORGE DEUKMEJIAN, Attorney General  
for the State of California  
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3 6000 State Building  
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4 Telephone: (415) 557-2226

REDACTED

5 Attorneys for Complainant  
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9 DEPARTMENT OF CONSUMER AFFAIRS  
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11 In the Matter of the Accusation )  
Against: )

12 ARCHIBALD A. MCKIRDY )  
13 2645 Ocean Avenue )  
San Francisco, California )  
14 Physician and Surgeon's )  
Certificate No. A-21018, )

NO. D-2539

ACCUSATION

15 Respondent. )  
16 )

17 Complainant alleges that:

18 1. He is Robert G. Rowland, the Executive Director of  
19 the Board of Medical Quality Assurance of the State of California  
20 (hereinafter referred to as the "Board") and makes and files this  
21 accusation solely in his official capacity.

22 2. On or about March 20, 1964, the Board issued  
23 physician and surgeon certificate No. A-21018 to Archibald A.  
24 McKirdy, M.D. (hereinafter referred to as "respondent"). Said  
25 license is currently in good standing.

26 3. Sections 2360 and 2372 of the Business and Pro-  
27 fessions Code (hereinafter referred to as the "code") provide that

1 every certificate issued may be suspended or revoked.

2 4. Section 2361 of the code provides that the Division  
3 of Medical Quality shall take disciplinary action against any  
4 holder of a certificate who is guilty of unprofessional conduct.

5 5. Drugs. At all times pertinent herein:

6 A. Ritalin, a trade name (CIBA Pharma-  
7 ceutical Co.) for methylphenidate hydrochloride, was  
8 classified as a schedule II controlled substance in  
9 Health and Safety Code section 11055, subdivision (d)  
10 (4), and was also classified as a dangerous drug with-  
11 in the meaning of section 4211, subsection (k) of the  
12 code.

13 B. Tuinal, a trade name (Lilly) for a  
14 combination of secobarbital and amobarbital, was  
15 classified as a schedule III controlled substance  
16 in Health and Safety Code section 11056, subdivision  
17 (b) (1), and was also classified as a dangerous drug  
18 within the meaning of code section 4211, subsections  
19 (a) and (k).

20 6. Section 2399.5 provides that prescribing dangerous  
21 drugs as defined in code section 4211 without a good faith prior  
22 examination and medical indication constitutes unprofessional  
23 conduct.

24 7. Respondent is subject to disciplinary action pur-  
25 suant to section 2361 of the code because respondent has been  
26 guilty of unprofessional conduct within the meaning of code  
27 section 2399.5 according to the following facts:

1 A. On or about the following dates, respondent  
2 wrote prescriptions for one S [REDACTED] D [REDACTED], who was  
3 using the alias of "S [REDACTED] D [REDACTED]", for the indicated  
4 drugs:

5 PREScription  
6 DATE

7 DRUG NAME  
8 AND QUANTITY

9 5-8-79

50 Ritalin 20 mg.

10 6-13-79

50 Ritalin 20 mg.

11 7-11-79

50 Ritalin 20 mg.

12 8-9-79

50 Ritalin 20 mg.

13 10-3-79

50 Ritalin 20 mg.

14 B. On or about the following dates, respondent  
15 wrote prescription for one D [REDACTED] P [REDACTED], who was  
16 using the alias "D [REDACTED] J [REDACTED]", for the following  
17 drugs:

18 PREScription  
19 DATE

20 DRUG NAME  
21 AND QUANTITY

22 5-30-79

60 Ritalin 20 mg.

23 6-27-79

60 Ritalin 20 mg.

24 7-25-79

60 Ritalin 20 mg.

25 8-22-79

60 Ritalin 20 mg.

26 7-25-79

30 Tuinal 3 gr.

27 10-3-79

60 Ritalin 20 mg.

28 C. On or about the following dates, respondent  
29 wrote prescriptions for one B [REDACTED] D [REDACTED], who was  
30 using the alias "J [REDACTED] S [REDACTED]", for the indicated  
31 drugs:

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PRESCRIPTION  
DATE

DRUG NAME  
AND QUANTITY

6-4-79

60 Ritalin 20 mg.

7-9-79

60 Ritalin 20 mg.

8-7-79

60 Ritalin 20 mg.  
(Name on Rx: Janet Smith)

9-24-79

60 Ritalin 20 mg.

D. Respondent prescribed the dangerous drugs listed in paragraphs 7(a) through 7(c) without a good faith prior examination and without medical indication therefore and to persons not under his treatment for a pathology or condition.

8. Section 2391.5 of the code provides that a violation of any state statute regulating controlled substances constitutes unprofessional conduct.

9. Health and Safety Code section 11154 provides that no person shall prescribe a controlled substance to any person who is not under his treatment for a pathology or condition.

10. Respondent is subject to disciplinary action pursuant to section 2361 of the code because he violated section 2391.5 of the code (taken in conjunction with Health and Safety Code section 11154) according to the facts set forth in paragraphs 7(a) through 7(d) hereinabove.

11. Health and Safety Code section 11172 provides that no person shall antedate or postdate a prescription.

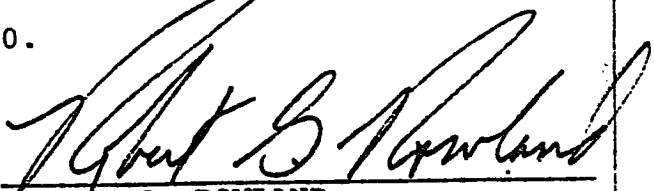
12. Respondent is subject to disciplinary action pursuant to section 2361 of the code because he violated section

1 2391.5 of the code (taken in conjunction with Health and Safety  
2 Code section 11172) in that he postdated prescriptions as detailed  
3 below:

4	<u>NAME ON</u> <u>PRESCRIPTION</u>	<u>DATE ON</u> <u>PRESCRIPTION</u>	<u>DATE PRESCRIPTION</u> <u>WRITTEN</u>	<u>DRUG NAME</u> <u>AND QUANTITY</u>
5				
6	S [REDACTED] D [REDACTED]	8-9-79	7-11-79	50 Ritalin 20 mg.
7	D [REDACTED] J [REDACTED]	8-22-79	7-25-79	60 Ritalin 20 mg.
8	J [REDACTED] S [REDACTED]	8-7-79	7-9-79	60 Ritalin 20 mg.

9 WHEREFORE, complainant prays that the Board of Medical  
10 Quality hold a hearing on the matters contained herein and  
11 following said hearing, issue a decision revoking or suspending  
12 respondent's physician and surgeon certificate

13 DATED: April 29, 1980.

14  
15   
16 ROBERT G. ROWLAND  
17 Executive Director  
18 Board of Medical  
19 Quality Assurance

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27  
Complainant